### UNITED STATES OF AMERICA

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

### **REGION 20, SUBREGION 37**

PUNA GEOTHERMAL VENTURE Employer,	) ) ) ) Case No. 20-RC-078220
and	) ) )
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Local 1260	) ) )
Petitioner	) )

# PETITIONER'S BRIEF IN SUPPORT OF HEARING OFFICER'S REPORT ON OBJECTIONS

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### PETITIONER'S BRIEF IN SUPPORT OF

#### HEARING OFFICER'S REPORT ON OBJECTIONS

Pursuant to Section 102.69 of the National Labor Relations Board's (the "Board") Rules and Regulations, the Petitioner, the International Brotherhood of Electrical Workers, Local 1260 (the "Union" or "Petitioner") respectfully submits this brief in support of the Hearing Officer's Report on Objections (the "Hearing Officer's Report") dated August 27, 2012, overruling in its entirety, Puna Geothermal Venture's ("PGV" or the "Employer") objections presented at the hearing held before the Hearing Officer in Hilo, Hawaii on July 16 to July 19, 2012.

The Union concurs with the Hearing Officer's Report and determination with respect to the finding that PGV completely failed to meet its burden of proof in establishing any of the following claims that:

- 1. Either Abel and/or Abraham Costa were Union Agents.
- 2. Abel Costa imposed improper supervisory influence on PGV employees.
- 3. The Union, specifically Business Representative Michael Brittain, engaged in any misconduct, wrongdoing or other action that improperly influenced and/or invalidated the election.

The Union further concurs with the Hearing Officer's finding that PGV also completely failed to meet its burden of proof in establishing the validity of any of the five objections filed with the Board and presented to the Hearing Officer:

The Union engaged in objectionable conduct by contacting the Employer's
employees preceding the election in a manner intended to coerce them through threats
and potential for union retaliation again employees.

- 2. The Union engaged in objectionable conduct by contacting the Employer's employees preceding the election and threatening job loss.
- 3. The Union engaged in objectionable conduct by making promises of Union benefits to employees.
- 4. The Union engaged in objectionable conduct by making false and misleading statements to employees with the intent to coerce them prior to and during the election.
- 5. The Union destroyed the laboratory environment for a free and fair election by engaging in electioneering on the line of march to vote.

The Union further concurs with the Hearing Officer's finding that "the Employer's five objections to the Union's conduct are without merit" and the Hearing Officer's recommendation that the objections all be overruled, and that the Union be certified as the collective bargaining representative for PGV. (Hearing Officer's Report at 37).

With respect to the issue of whether Mr. Abel Costa is a statutory supervisor, the Union concurs with the Hearing Officer's finding that "The record evidence regarding Abel Costa's status as a supervisor is at best sparse. There are gaping holes in the evidence and much of what exists in the record consists of conclusory statements without much more." (Hearing Officer's Report at 27).

The Union again reiterates that PGV failed to provide any credible evidence that Mr. Brittain and/or any alleged agents engaged in any objectionable behavior whatsoever that 1) coerced any employee through threats or potential for union retaliation; 2) threatened job loss; 3) made promises of Union benefits; 4) made false and misleading statements to coerce them to vote for the Union; and/or 5) engaged in electioneering on the line of march. Similarly, PGV

also failed to provide any credible evidence of the questions of fact raised by the Board in its Report and Recommendation Regarding Certain Objections and Notice of Hearing Regarding Others (Board Exhibit 1(e)). PGV failed to provide any credible evidence that Mr. Abel Costa was an agent of the Union or advocated that employees support the Union during the critical period. PGV also failed to provide any credible evidence that Mr. Michael Brittain offered to protect employees from termination if they had but one DUI, and failed to provide any credible evidence that Mr. Abraham Costa was an agent of the Union or engaged in improper campaigning on the line of march to the polls.

Indeed, none of PGV's witnesses, Mr. Michael Jumalon, Mr. Taylor Sumida, Mr. Rick Duvoisin, Mr. Doug Maeda, Mr. Bill Weibe and Mr. Ohmad Zimron, provided any credible testimony to support any of PGV's allegations of misconduct, misrepresentation and/or threatening behavior. The Union respectfully submits that each of its four (4) witnesses, Mr. Michael Brittain, Mr. Abel Costa, Mr. Abraham Costa and Mr. Bob Culnan, testified credibly and truthfully, and established that Mr. Brittain maintained a continued and visible presence during the entire campaign, and that no evidence of prohibited or objectionable behavior, by Mr. Brittain, Mr. Abel Costa and/or Mr. Abraham Costa, was produced on record.

Based upon the complete lack of any credible evidence of misconduct, misrepresentation and/or threatening behavior, and the relevant law, the Union respectfully requests that the Board confirm the Hearing Officer's Report on Objections herein, overrule PGV's objections and certify the IBEW Local 1260 as the labor representative as well as issue an Order directing PGV to immediately bargain with the Union.

## Dated, August 28, 2012

Respectfully submitted,

PETITIONER, IBEW LOCAL 1260

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